

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.05.2015

+ **W.P.(C) 5616/2015 & CM Nos.10132-33/2015**

SALMAN HASAN

..... Petitioner

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Counsel for the petitioner (appearance not given).

For the Respondent : Mr B. B. Sawhney, Sr. Advocate with Mr Amit George and Mr Aditya Shandliya.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying that the petitioner be permitted to appear in the “Supplementary Examination/Special Back Paper Examination” conducted by the respondent university. The petitioner contends that he has been denied an opportunity to appear in the said examination pursuant to a disciplinary action taken against him in November 2013, he submits that this is beyond the scope of punishment imposed by the respondent university at the material time. The petitioner is also aggrieved as he has been denied hostel facilities as well scholarship, which was granted to him under the Merit cum Means Scheme.

2. The relevant facts necessary to consider the controversy arising in this petition are, briefly narrated, as under:

2.1 It is alleged that on the intervening night of 01.11.2013 and 02.11.2013, the petitioner along with certain other students distributed pamphlets and plastered posters, which contained objectionable material. It is alleged that the contents of the pamphlets and posters sought to “*create a wedge and rift among religio-sections of the student community*”. In addition it was alleged that the petitioner along with other students had invited one Sheikh Mohammed Rahmani Madani (an outsider) to deliver a religious discourse in the TT room of a Hostel on 26.10.2013, without the permission of the respondent university. It is alleged Sh. Madani raised controversial and disturbing issues in his discourse which deeply hurt the religious sentiments of certain inmates of the hostel.

2.2 In view of the aforesaid, disciplinary proceedings were initiated against the petitioner and certain other students. A show-cause notice and a supplementary show-cause notice were issued. After hearing the petitioner, the Disciplinary Committee of the respondent university passed an order dated 28.11.2013 expelling the petitioner from the respondent university for a period of one year and withdrawing the hostel facilities permanently.

2.3 The aforesaid order was challenged by the petitioner by way of a Writ Petition being W.P.(C) No.251/2014 which was dismissed by an order dated 16.01.2014. This was carried in appeal before the Division Bench of this Court (being LPA No.81/2014). By an order dated 20.02.2014, the Division Bench upheld the punitive action taken by the respondent university, however, modified the extent of punishment to expulsion for current academic year. The Division Bench specifically held that the

expulsion meted out to the petitioner would be limited to the academic year 2013-14 and the petitioner would be permitted to rejoin the university on the commencement of the academic session in the month of July, 2014.

2.4 In the aforesaid circumstances, the petitioner was entitled to rejoin the second year of his course in the academic session 2014-15.

2.5 After the order of the Division Bench, the petitioner made several representations to the respondent university. By a representation dated 04.03.2014, the petitioner requested that he be permitted to appear in the examination for the second year of the course, which was scheduled to be held in May, 2014. This was followed by another representation dated 19.05.2014. The petitioner reiterated his request to be permitted to appear in four papers of the second year that were scheduled to be held after 19.05.2014. The petitioner further requested for hostel facilities. The petitioner sent another representation on 21.05.2014 requesting that he be permitted to appear for the supplementary examination of the second year, which was scheduled to be held in June, 2014. On 23.07.2014, the petitioner once again requested that he be permitted to appear in the annual supplementary examinations scheduled to be held in August, 2014. On 09.09.2014, the petitioner requested that a special examination be arranged in order that he could clear the second year examination.

2.6 The petitioner re-joined the second year course in December, 2014. The petitioner once again made representations that he be permitted to clear his backlog for the second year papers and be promoted to the third year in order that he could appear in the supplementary examination for the third year to be held in the later part of 2015.

3. It is apparent from the above that all representations made by the

petitioner were, in effect, seeking permission to appear in the examinations for completing his second year course and for promotion to the third year. This was clearly not permissible as the petitioner had been expelled for one year. The Division Bench of this Court had restricted this punishment to one academic year because the punishment of expulsion of one year would entail that the petitioner would be short of his attendance even in the next academic year and consequently, the petitioner would effectively lose two academic years. The Division Bench had expressly held that the petitioner could rejoin the respondent university in July, 2014. Therefore, the petitioner would necessarily have to repeat the second year of his course. Apparently, the petitioner was not willing to accept this and continued to make representations for being permitted to appear in the second year examination. The endeavour of the petitioner was to nullify the effect of his expulsion which had already been upheld by this Court (both the Single Bench and Division Bench).

4. The petitioner was required to rejoin the second year in July, 2014 and complete the second year of his course by April-May, 2015. However, since the petitioner rejoined the second year course only in December, 2014, his attendance would fall short on account of his not attending the classes from July, 2014 to December, 2014. The learned counsel for the respondent university submitted that this was condoned but the petitioner's attendance for the period commencing from December, 2014 to April, 2015 also fell short of the required percentage. In other words, according to the respondent university, the petitioner did not attend the requisite percentage of classes/lectures held between December, 2014 to April, 2015.

5. The learned counsel for the respondent university referred to the

Examination Rules and Ordinance of the university and drew the attention of this court to Ordinance 3 of the said Ordinances, which is quoted below:-

“ 3.0 ATTENDANCE

3.1 Each student is normally required to attend all the lectures, tutorials and, the studio classes in every subject, as also the curricular and co-curricular activities. However, attendance of 75% will be necessary.

3.2 A student who fails to achieve the minimum prescribed attendance as per the provisions of the Clause-3.1 shall not be allowed to appear at the examinations and shall be deemed detained.”

6. In terms of the aforesaid Ordinance, the petitioner was required to attend at least 75% of the lectures and tutorials. As stated earlier, the learned counsel for the respondent university asserted, on instructions, that the petitioner did not fulfil this criteria as the petitioner had not attended 75% of the lecture/classes during the period December, 2014 to April, 2015. The learned counsel for the petitioner does not dispute that the attendance of the petitioner for the period December, 2014 to April, 2015 would fall short of the required threshold. However, he submits that other students, who were similarly placed have been permitted to take their examination. He further states that certain teachers may not have marked the petitioner's attendance.

7. In my view, it would not be expedient for this Court to examine in these proceedings the controversy whether the petitioner's attendance was marked by some teachers or not. In view of the statement made by the learned counsel for the respondent university, it is apparent that the petitioner has not been permitted to take the examinations only on account

of shortage of attendance and the internal assessments.

8. The question whether a Writ of mandamus can be issued directing institutions to waive the requirement of attendance is no longer *res integra*. This court has in a catena of decisions held that attending classes is *sine qua non* to undergoing a course; thus, even in cases where the students have been unable to meet the attendance criteria for compelling reasons, this Court has declined any relief.

9. In **Kiran Kumari & Ors. v. Delhi University & Ors.**: WP(C) **9143/2007 decided on 16.05.2008**, a division bench of this Court observed as under:

“The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.”

10. It is well settled that the student who has not fulfilled the criteria of attending requisite number of lectures, has in fact not completed the course and, therefore, cannot proceed for the end term evaluation.

11. In substance, the petitioner is seeking that the directions be issued by this Court compelling the respondent university to act contrary to its ordinances and regulations. It is trite law that such directions cannot be issued. In **‘Maharshi Dayanand University v. Surjeet Kaur: (2010) 11 SCC 159**, the Supreme Court had considered a case where a student had pursued two courses (MA & B.Ed.) simultaneously in contravention of the rules. Consequently, the university had declined to confer the degree of B.Ed. to the student. This led the student to approach the District Consumer

Disputes Redressal Forum. The said Forum directed the university to issue the B.Ed. degree, as claimed by the petitioner. In this context, the Supreme Court allowed the appeal preferred by the University and held as under:-

“11. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.”

12. In **State of Punjab v. Renuka Singla: (1994) 1 SCC 175**, the aforesaid principle was reiterated by the Supreme Court in the following words:-

“8. ... We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.”

13. In view of the aforesaid, this Court cannot direct the respondent university to act contrary to its rules and waive the requirement of attendance.

14. The petitioner states that other similarly placed students have been permitted to sit in the examinations even though their attendance is short of the required minimum. The petitioner prays that he should be treated in the same manner and not permitting him to appear in the examinations would amount to hostile discrimination. In my view, even if the petitioner's assertion that other similarly placed students have been permitted to take their examination despite shortage of attendance is assumed to be correct, no directions as sought for can be issued. It is well settled that there is no

negative equality and if certain benefit has been granted by the university contrary to its rules/regulations, an order directing the respondent university to act in a similar manner, that is, contrary to its rules/regulations cannot be issued. At best, the petitioner can seek that the benefit granted to other similarly placed students be cancelled. However, an order directing the respondent university to grant similar treatment to the petitioner, which is contrary to its rules/regulations cannot be issued. In **Choudhary Ali Zia Kabir v. Guru Gobind Singh Indraprastha University & Anr.**: W.P.(C) No.3129/2010, a Coordinate Bench of this Court considered a similar plea and held as under:-

“15. The petitioner has also urged that the respondent no.1 University has permitted other students who also do not have the requisite attendance to take the examination. Neither have the said other students been made parties nor can such enquiry be made in these proceedings. Moreover, there can be no equality in illegality. Even if the contention of the petitioner were to be true that the policy of the respondents regarding attendance has been violated qua other students, that would only entitle the petitioner to have the said action of the respondent no.1 University struck down, as held in **Gursharan Singh v. NDMC** (1996) 2 SCC 459.”

15. It appears that the petitioner is a bright student. However, no relief can be granted to the petitioner as he is short of attendance.

16. It would be open for the petitioner to join the second year classes once again from the academic year 2015, commencing in July, 2015 and complete the course. Insofar as the hostel facilities are concerned, the division bench of this court had in the order dated 20.02.2014 observed as under:

“As regards permanent expulsion from the hostel, we are of the opinion that without disturbing the penalty we should only request the Vice-Chancellor of the University to reconsider granting them hostel accommodation when the next academic session commences if the appellants agreed to furnish good conduct bond.”

17. I have no doubt, that the aforesaid observations were made keeping in mind the doctrine of proportionality and considering that - given the petitioner's financial condition - denial of hostel facilities would be unduly harsh on the petitioner. In the circumstances, the respondent university must consider the petitioner's request for hostel facility sympathetically.

18. It is not disputed that the petitioner is from economically weaker section of society and was earlier afforded a scholarship. In the circumstances, it will be open for the petitioner to apply for assistance from the university/other authorities and the university would consider granting such financial assistance in accordance with its policy uninfluenced by the punitive action taken against the petitioner and/or the academic breaks suffered by the petitioner.

19. The petition is disposed of with the aforesaid directions. Pending applications also stand disposed of.

VIBHU BAKHRU, J

MAY 29, 2015
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